

United States District Court
Southern District of Texas

ENTERED

November 17, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

MACARIO RINCON,
“Petitioner”,

V.

BOBBY LUMPKIN, Director, Texas
Department of Criminal Justice,
Correctional Institutions Division,
“Respondent”.

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Civil Action No. 1:22-cv-00078

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the Court are these pleadings: Plaintiff's "Original Petition for Writ of Habeas" ("Original Petition") (Dkt. No. 1), Plaintiff's "Amended Petition for Writ of Habeas" ("Amended Petition") (Dkt. No. 5) and Magistrate Judge's "Report and Recommendation" ("R&R") (Dkt. No. 9). The R&R recommends this Court (1) dismiss Plaintiff's Amended Petition (Dkt. No. 5) without prejudice (2) direct the Clerk of Court to close this case and (3) decline to issue a certificate of appealability.

No objections were filed by either party. When no objections are filed to a magistrate judge's ruling, the district court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Finding no clear error, abuse of discretion, or finding contrary to law, the R&R is **ADOPTED**.

Plaintiff's Amended Petition (Dkt. No. 5) is **DISMISSED** without prejudice. The Clerk of the Court is **ORDERED** to close this case. The Court **DECLINES** to issue a certificate of appealability.

Signed on this 17th day of November, 2022.

~~Rolando Olvera
United States District Judge~~